



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2016-0675; FRL-9956-03]

TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amended the Toxic Substance Control Act (TSCA). TSCA, as amended, requires EPA to review the size standards for small manufacturers and processors, which are currently used in connection with reporting regulations under TSCA Section 8(a). In particular, EPA must make a determination whether a revision of those standards is warranted. EPA's preliminary determination is that revisions to currently codified size standards for TSCA Section 8(a) are indeed warranted. As part of the ongoing review process, the EPA is requesting public comment on whether a revision of the current size standard definitions is warranted at this time.

DATES: Comments must be received on or before *[insert 30 days after date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2016-0675, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you

consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW. Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:*

Lynne Blake-Hedges, Chemistry, Economics, and Sustainable Strategies Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8807; email address: blake-hedges.lynne@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or process chemical substances or mixtures. The following list of North American Industrial

Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them.

Potentially affected entities may include:

- Basic Chemical Manufacturers (NAICS code 3251);
- Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filament

Manufacturers (NAICS code 3252);

• Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturers (NAICS code 3255);

- Paint, Coating, and Adhesive Manufacturers (NAICS code 3255);
- Other Chemical Product and Preparation Manufacturers (NAICS code 3259);

and

- Petroleum Refineries (NAICS code 32411).

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your

comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

II. What Action is the Agency Taking?

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amends the Toxic Substance Control Act (TSCA), the nation's primary chemicals management law. A summary of the new law, is available at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>. This particular action involves the revised TSCA section 8(a)(3)(C), which requires EPA, after consultation with the Administrator of the Small Business Administration, to review the adequacy of the standards for determining the manufacturers and processors which qualify as small manufacturers and processors for purposes of TSCA sections 8(a)(1) and 8(a)(3). TSCA furthermore requires that (after consulting with the Small Business Administration and providing public notice and an opportunity for comment) EPA make a determination as to whether revision of the standards is warranted.

In the 1980s, the EPA issued standards that are used in identifying which businesses qualify as small manufacturers and processors for purposes of the reporting and recordkeeping rules issued under TSCA section 8(a). (Under TSCA, manufacture includes import, so references to chemical manufacture include chemical import.) These size standards describe who is generally exempt from reporting requirements under TSCA section 8(a). This exemption arises because TSCA section 8(a)(1) generally exempts small manufacturers and processors from reporting requirements, except in limited cases set forth in TSCA section 8(a)(3).

In 1982, the EPA finalized standards for determining which manufacturers of a

reportable chemical substance qualified as small manufacturers for purposes of a particular set of TSCA section 8(a) rules. These are the Preliminary Assessment Information Reporting (PAIR) rules, codified in 40 CFR Part 712, Subpart B. The small manufacturer standard for PAIR rules is found at 40 CFR 712.25(c).

In 1988 EPA established general small manufacturer standards for use in other rules issued under TSCA section 8(a) (40 CFR 704.3). For example, these are the standards that now apply to the Chemical Data Reporting (CDR) rule (40 CFR Part 711). The general standards are somewhat different from the earlier standards that are codified for use in the PAIR rules. The general small manufacturer standard is as follows:

Small manufacturer or importer means a manufacturer or importer that meets either of the following standards:

(1) First standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) Second standard. A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than \$4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) Inflation index. EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide Federal Register notification when changing the total annual sales values.

Certain rules issued under TSCA section 8(a) directly codify slight variations of the general small manufacturer standards at 40 CFR 704.3. (See, e.g., 40 CFR 704.45). Other rules issued under TSCA section 8(a) establish (for use in a particular rule) analogous standards for small processors (See, e.g., 40 CFR 704.33).

As an initial step in evaluating whether a change in these current size standards are warranted, EPA reviewed the change in the Producer Price Index (PPI) for Chemicals and Allied Products between 1988 (the year the size standards were last revised) and 2015 (the most recent year of PPI data available) (Ref. 1). EPA found that the PPI has changed by 129 percent, far exceeding the 20 percent inflation index specified as a level above which EPA may adjust annual sales levels in the current standard if deemed necessary. Furthermore, among the more than 500 revenue-based size standards set by the Small Business Administration (SBA), the lowest is \$5.5 million, and more than 75% of those standards are in excess of \$7.5 million. Some revenue-based standards are as high as \$38.5 million. Thus, EPA's existing \$4 million annual sales standard is an outlier

at the low end of this range. Because of the magnitude of the increase in the PPI since the last revision of the size standards and the current annual sales standard is comparatively low given current revenue-based size standards developed by SBA, EPA has preliminarily determined that a revision to currently codified size standards is warranted.

EPA is requesting public comment on the adequacy of the current standards and whether revision of the standards is warranted. In the event that EPA determines that a revision to the standards is warranted, any such revision would occur by subsequent rulemaking, which would involve a further opportunity for public notice and comment. Accordingly, the scope of this first action (i.e., the determination) will not necessarily include responding to stakeholder comments as to what specific amendments ought to be made to the standards.

EPA is also in the process of consulting with the SBA on the adequacy of the current standards and whether revision of the standards is warranted. (Ref. 2.) EPA has requested that SBA provide its input within 15 business days of receiving EPA's consultation request. When SBA's consultation response becomes available, EPA plans to add that response to the docket for this preliminary determination.

III. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. Bureau of Labor Statistics. "Producer Price Index, Series WPU06, Chemicals and Allied Products, 1933-2015". Retrieved November 14, 2016 from *<http://data.bls.gov/cgi-bin/srgatet>*.
2. Jones, Jim. Letter to Maria Contreras-Sweet. "Consultation under Section 8(a)(3)(C) the Toxic Substances Control Act". December 7, 2016.

Authority: 15 U.S.C. § 2607(a)(3)(C)

Dated: December 7, 2016.

Jim Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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